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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of the Application by Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, Inter-LATA Services in Michigan.	)))))	CC Docket No. 97-1

COMMENTS OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

On January 2, 1997, Ameritech Michigan ("Ameritech") submitted an Application pursuant to Section 271 of the Telecommunications Act of 1996 ("the Act") to provide in-region interLATA services in Michigan. The Application was later supplemented on January 17, 1997. This Commission issued a Public Notice[1] establishing the date of February 6, 1997 for Comments on the Application, as supplemented. The Ohio Cable Telecommunications Association ("OCTA") is an association of 26 providers of cable television and telecommunications services currently serving over 2.7 million cable subscribers in Ohio. The OCTA hereby submits its comments on the Ameritech Application for in-region, interLATA authority.

[1] The FCC first established the date of January 22, 1997 as the date for the filing of comments on the Ameritech Application. However, upon the supplementation of the Application on January 17, 1997, the FCC issued a Public Notice on January 17, 1997, revising the Comment due date to February 6, 1997. Ameritech again supplemented its Application on January 29, 1997, and pursuant to a motion by ALTS, the FCC again revised the due date for filing comments to February 10, 1997 by Public Notice dated February 3, 1997.

I. PREFACE

Unlike the comments the Commission may receive from many other parties whose motivation may be the delay of Ameritech's entry into the in-region, interLATA market, OCTA has no such motivation. Indeed, the focus of OCTA's attention in these comments is directed toward the local exchange marketplace, and at the present time no OCTA members are engaged in efforts to join the hurly burly of long distance competition in Ohio. However, the ability of the incumbent local exchange company to offer combined long distance and local exchange service in its service territory, before the advent of effective competition in the local exchange market, could well presage the re-creation of the circumstances which led to the Modification of Final Judgment in 1983 - the existence of a single source provider of long distance and local exchange services with sufficient market power to deny customers of telecommunications services the intended benefits which led to passage of the Act in 1996. Thus, OCTA's focus is upon ensuring that certification of Ameritech to provide in-region, interLATA services does not doom local exchange competition from the outset.

OCTA is pro-competition. In fact, OCTA and its members already experience competition from Ameritech's cable subsidiary in Ohio. Ameritech has 27 cable franchises regionally. Neither OCTA or any of its members have opposed Ameritech obtaining any of its Ohio franchises. Thus, OCTA is already experiencing competition in its business and recognizes that competition is a mandate from Congress. Accordingly, it is with knowledge and experience

that OCTA implores the FCC to be mindful of the need for effective local exchange competition to exist before permitting Ameritech to enter the long distance market.

II. AMERITECH'S APPLICATION SHOULD BE DENIED

In these comments, the OCTA presents the Commission with information about its experience with Ameritech in Ohio. Although the Application filed by Ameritech for Section 271 in-region, interLATA authority relates to Ameritech Michigan, by its very nature the Commission's decision on this Application will be precedent-setting. Moreover, OCTA believes that Ameritech will not alter its behavior based on the state in which it is operating; indeed, OCTA believes that Ameritech is pursuing its strategy on a region and corporate-wide basis. In fact, Ameritech's pleadings in Ohio in current, on-going proceedings before the PUCO continually reference Ameritech's region-wide experience.[2] Thus, OCTA believes that the information provided in these comments is relevant to the determination to be made by the FCC in this case.

A. Non-Discrimination Relative to Its Affiliates

In its Application, Ameritech asserts that, pursuant to Section 272(b)(4), its long distance affiliate, Ameritech Communications, Inc. ("ACI"), fully complies with the requirement that the separate affiliate "not obtain credit under any arrangement that would permit a creditor, upon

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[2] *In the Matter of the Investigation into Ameritech Ohio's Entry into In-Region interLATA Service,* PUCO Case No. 96-702-TP-COI; *In the Matter of the Review of Ameritech Ohio's Economic Costs,* PUCO Case No. 96-922-TP-UNC.

default, to have recourse to the assets of the Bell operating company." Application at 49. In addition, Ameritech asserts that ACI and Ameritech Michigan will comply with the Section 272(b)(5) requirement that the separate affiliate "conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection." *Id.*

While Ameritech may meet the surface requirements of the Act in these two respects, Sections 271(d)(3)(B) and (C) of the Act require that, "the requested authorization be carried out in accordance with the requirements of section 272; and (C) the requested authorization is consistent with the public interest, convenience and necessity." The record developed in Ohio in the ACI certification proceeding demonstrates that the potential exists for Ameritech to utilize its corporate structure to advantage its affiliate, ACI, relative to the position of new entrant telecommunications companies ("NECs"). As an example, although ACI has not obtained credit from the Ohio operating company (Ameritech Ohio), it has done so from the parent, Ameritech, without any writing evidencing the loan of $138 million. *Ameritech Communications, Inc.*, PUCO Case Nos. 96-327-CT-ACE and 96-658-TP-ACE, Tr. Vol. IV at 42-47 (Attachment 1 to these Comments). Although on its face the Ameritech - ACI relationship does not appear to be contrary to the provisions of the Act, the arrangement established by Ameritech to fund its affiliate circumvents the intended provisions of the Act.

The FCC has already recognized the important relationship between Sections 271 and 272 of the Act. In its first Report and Order regarding the implementation of non-accounting safeguards in Sections 271 and 272, the FCC noted that, before it could make any determinations under Section 271 it must determine that the Bell Operating Company ("BOC") has complied with the safeguards imposed by Section 272. The FCC's first Report and Order states:

> Under Section 271, we must determine, among other things, whether the BOC has complied with the safeguards imposed by section 272 and the rules adopted herein. (FCC 96-489, p. 5).

Thus, the FCC must determine that Ameritech Michigan has complied with the safeguards imposed by Section 272 and the rules implementing that section before it can approve Ameritech Michigan's application. However, the FCC rulemaking with respect to Section 272 is not complete. In fact, comments are not due on the FCC's proposed rules until February 19, 1997 and reply comments are not due until March 21, 1997. *In the Matter of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, December 24, 1996 at 1.

In Ohio, the PUCO has implemented its own structural safeguards with respect to affiliate transactions. However, it is not clear whether and how such safeguards will or will not be applied to ACI. In fact, the PUCO has indicated that it may permit a specific exemption from the

structural safeguards imposed traditionally on local exchange company affiliates.[3] It is not sufficient for ACI to merely claim that it will abide by structural safeguards imposed at either the federal or state level; the FCC must ensure that there are structural safeguards in place to ensure that any affiliate of a BOC is not advantaged in any marketplace, particularly during this nascent stage of competition.

B. Rates Based on Cost

Ameritech asserts in its Application that it has "fully implemented the competitive checklist" based upon various provisions in the access and interconnection agreements it is utilizing to support its Application. Application at 19. However, given the experience of the OCTA in Ohio, and recent pronouncements of the Michigan Public Service Commission ("MPSC"), OCTA believes that Ameritech has vastly overstated its case for compliance with the competitive checklist items in Section 271(c)(2) of the Act.

Section 271(c)(2)(B) of the Act requires that the Bell Operating Company ("BOC") seeking in-region, interLATA authority must provide or generally offer to other telecommunications carriers "(I) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)" of the Act. Section 252(d)(1) requires that the "just and reasonable rate" for interconnection and unbundled network elements:

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[3] *In the Matter of the Commission Investigation Relative To the Establishment of Local Exchange Competition and Other Competitive Issues*, PUCO Case No. 95-854-TP-COI (Entry on Rehearing dated November 7, 1996 at 9-11) (Attachment 2 to these comments).

(A) shall be -

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable)....

Section 252(d)(1)(A)(i).

However, the record currently being developed in Ohio with respect to the cost studies undertaken by Ameritech in PUCO Case No. 96-922-TP-UNC to establish the rates for interconnection and unbundled network elements, demonstrates numerous mistakes, unfounded assumptions, and the use of non-forward looking cost elements in the rates proposed by Ameritech Ohio. The record with respect to these costing issues is confidential. The testimony on the cost issues, in particular the cross-examination of the witness provided by Ameritech Ohio in support of the Ameritech cost studies, is being taken *in camera*. Therefore, OCTA cannot provide in the publicly available portion of its comments the cross-examination transcripts, or copies of the testimony of witnesses discussing the deficiencies in the Ameritech TELRIC cost studies submitted under seal. However, the OCTA encourages the FCC to request copies of these items which are currently submitted under seal and subject to a protective agreement.

The MPSC has issued a series of orders which support the evidence now being developed in Ohio with respect to the deficiencies in Ameritech's cost studies. For example, the MPSC sent Ameritech back to the drawing board not once, but at least three times, in order for Ameritech to develop cost studies adequate to support the initial offering of interconnection and unbundled network elements.

In addition, basing compliance with checklist items on interconnection agreements that contain interim rates and are only effective for approximately two years is not sufficient for purposes of creating lasting and effective competition. In both Ohio and Michigan, Ameritech is still undergoing review of its TELRIC cost studies. Thus, Ameritech does not have any state commission sanctioned cost-based rates. Merely saying such rates will be established does not make it so.

Thus, as the Commission can determine from the Michigan Orders, and the confidential record being developed in Ohio, Ameritech has vastly overstated its case in support of a requested finding that Ameritech has fully implemented the competitive checklist. Ameritech's proposed rates are not based on the cost of providing those services, and the FCC should deny Ameritech's in-region, interLATA authority until Ameritech has developed rates based on cost.

C. Pole Attachments Issues

Finally, Ameritech's Application asserts that Ameritech is furnishing certain entities with non-discriminatory access to poles, ducts, conduits and rights-of-way. Application at 34. In addition, Ameritech asserts that "Ameritech Michigan will require ACI to obtain goods, services and facilities and information from it in the same way and on the same terms and conditions as are available to any other entity." *Id.* at 50. However, these assertions notwithstanding, the record of Ameritech's compliance with its duty to provide non-discriminatory access to poles, ducts, conduits, and rights-of-way is far from glowing.

The OCTA has filed a complaint against Ameritech Ohio related to Ameritech's failure to provide non-discriminatory access to poles, ducts, conduit and rights-of-way. *OCTA v. Ameritech Ohio*, PUCO Case No. 96-1027-TP-CSS, filed September 27, 1996. See Attachment 3 to these Comments. This case has undergone several days of hearings in Ohio, as well as extensive discovery. Further, the Michigan Cable Telecommunications Association has also spent several months contesting pole attachment rates proposed by Ameritech Michigan, as well as discriminatory treatment by Ameritech Michigan.[4] These complaints are based on demonstrated instances of discrimination by Ameritech against members of the associations filing the complaints. The OCTA fully expects that the Ohio Commission will find against Ameritech in its proceeding.

The OCTA submits that Ameritech has not fully complied with the competitive checklist relative to non-discriminatory access to poles, ducts, conduit and rights-of-way. Given this failure to comply, the FCC should deny Ameritech's Application for in-region, interLATA authority.

III. CONCLUSION

Unlike many potential competitors, OCTA is not bent upon denying Ameritech access to the long distance market for the reason that may be motivating other potential commentors - self-

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[4] The Michigan Cable Telecommunications Association's Response to Ameritech Michigan's Submission of Information Claiming To Be In Compliance With The Competitive Checklist, dated January 9, 1997, Case No. U-11104; *In the Matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Telecommunications Act of 1996* at 6-10; 17-18.

protection of long distance market share. However, OCTA is greatly concerned that granting Ameritech in-region, interLATA authority will effectively mean the addition of one more long distance carrier in a market characterized by numerous competitors, while creating the very real possibility that the local exchange market will be dominated by an incumbent having 100% of the market for local exchange services in Ohio, and nearly 100% in Michigan. Merely asserting that Ameritech is complying with the letter of the competitive checklist does not make it so. Factual evidence of Ameritech's implementation of the checklist must have a bearing on the Commission's decision in this case. It is extremely unlikely that competition will take root in a market in which Ameritech has the ability to offer its touted "one stop shopping" to its customers unless local exchange competition has a chance to commence before Ameritech is certified to provide in-region, interLATA services.

Approval of Ameritech Michigan's application is premature because the Section 271 and 272 rulemaking proceedings before the FCC are incomplete and Ameritech's compliance with existing rules has not been verified. Approval is also premature because there are no approved interconnection agreements based on MPSC approved cost-based rates. Further, the cost proceeding in Ohio is not yet complete. From a regional perspective, Ameritech cannot claim that its cost proceeding in Ohio is complete. Nor can it claim that the rates in Michigan will likely be approved based upon similar methodology. The methodology in Ohio has been proven problematic, at best. Finally, the checklist item regarding non-discriminatory access to poles,

conduits and rights-of-way is not met. Therefore, OCTA recommends that the FCC deny the Application for in-region, interLATA sought by Ameritech in this case.

Respectfully submitted,

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ATTACHMENT 1

PUBLIC UTILITIES COMMISSION

STATE OF OHIO

- - -

In the Matter of the Application of Ameritech Communications of Ohio, Inc. For Authority to Provide Competitive Telecommunications Services in the State of Ohio.	Case No. 96-327-CT-ACE
In the Matter of the Application of Ameritech Communications of Ohio, Inc. For a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Service Throughout the State of Ohio.	Case No. 96-658-TP-ACE

- - -

Hearing Room 11-D
Borden Building
180 East Broad Street
Columbus, Ohio 43215
Tuesday, November 5, 1996

Met, pursuant to assignment, at 8:00 o'clock a.m.

BEFORE:

Greta See and Mary K. Fenlon, Attorney-Examiners.

- - -

VOLUME IV

- - -

is that right?

A. That is correct.

Q. As far as you're aware, are there any other documents created or received by ACI that reflect a business plan or a business case for ACI's operations other than the business plan we have been talking about?

A. That is -- I am aware of no other business plan or business case related to ACI.

Q. Is it accurate to say that ACI obtains funds for its business from Ameritech Corporation?

A. We receive all our funding from Ameritech Corporation, yes.

Q. Is the funding primarily in the form of a loan?

A. Yes, it is.

Q. Is there any other kind of funding available such as a small amount of equity?

A. There is a nominal amount of equity, yes.

Q. Is the loan from Ameritech Corporation to ACI more akin to a line of credit or is it a fixed amount of funding?

A. It is not a fixed amount in the terms that -- The amount has not been established.

Q. I want to make sure I understand your answer.

There were a couple negatives in there that kind of throws me off.

Are you saying that the loan to ACI from Ameritech Corporation is not a fixed amount?

A. The amount that we have borrowed certainly is a fixed amount.

Q. Yeah. Is -- You're being difficult.

Is the -- Is the loan arrangement that ACI has with Ameritech Corporation an arrangement that allows ACI to only borrow one fixed sum of money, or does it allow ACI flexibility to how much money it will borrow from Ameritech Corporation?

A. It's the flexibility for us to borrow funds up to a predetermined limit.

Q. What's the predetermined limit?

A. The predetermined limit for 1996 is stated in the business plan.

Q. Well, are you saying that the predetermined limit -- Well, let me ask you this: As of this date, how much money has ACI borrowed from Ameritech Corporation?

A. It has borrowed, I believe as my testimony says, approximately $138 million on a net basis.

Q. And is the 138 more than, say, what ACI had borrowed half a year ago, like around the time you

testified in Michigan?

A. I would suggest that it is, yes.

Q. And by the way, you did testify in the Michigan Commission's consideration of ACI's application for a certificate; is that right?

A. Yes, sir, I did.

Q. Was that around March or April of this year?

A. I know it was the early part of this year. What month, I'm not certain.

Q. Did you also testify in Illinois?

A. Yes, sir, I did.

Q. And was that around August of this year?

A. I believe it was during the summer months, yes.

Q. And was that Illinois testimony in -- before -- in an Illinois Commission case considering ACI's application for a certificate?

A. I believe it was for ACI of Illinois.

Q. That's right. Okay. So getting back to my question: What's the limit for 1996 that ACI can borrow from Ameritech Corporation?

A. It's stated in the business plan.

Q. Well, I'm asking you to tell me.

MR. LUCAS: Let me object, again, your Honor. I think we're now getting into what might

be confidential.

EXAMINER SEE: Okay. Mr. Weston.

MR. WESTON: Yeah. I'm just suggesting that maintaining propriet- -- or, holding the amount of a loan confidential goes beyond the Rule 24(D)(1) requirement that only the minimum amount of information be held confidential.

There is information all over the record that might be in documents that the company considers confidential, that doesn't necessarily make it confidential. In the creation of a confidential document, the company will include all kinds of information as support for the document.

And I would just suggest that this is going too far to protect simply the amount of capital through loans that ACI has available from Ameritech Corporation. It can't harm the business in any way for that information to be public, and I think we have to be cautious of going too far, because the Commission has to write an order with references to a public record.

MR. LUCAS: Can I respond, your Honor?

EXAMINER SEE: Sure, go ahead, briefly.

MR. LUCAS: We have made clear in the testimony that there has been a level of funding that Ameritech has provided to ACI at this point in time, and it's in Mr. Earley's testimony.

The question he's now asking is going beyond that, which is how much is maximally available from Ameritech Corporation, and, we would suggest to you, would be confidential. There is information in the testimony itself relating to the funding that has taken place so far in the form of a loan.

EXAMINER SEE: And your objection is sustained. You can address this in the in-camera portion. The parties are going to agree later that some portion of it can be included in the public record.

MR. WESTON: Thank you, your Honor.

BY MR. WESTON:

Q. Now, Mr. Earley, is the arrangement under which ACI acquires its loan from Ameritech Corporation memorialized in a written document?

A. No, sir.

Q. You didn't, yourself -- Well, let me ask a different question.

Does the loan, pursuant to which to date ACI

has obtained $138 million in funding from Ameritech Corporation, have a payback term?

A. Payback term has not been stipulated.

Q. And that's stipulated is a -- Well, let me just ask you this: When you say the payback term for the loan has not been stipulated, you mean that there is no set payback term as of yet?

A. There is none, that is correct, at this point in time.

Q. Now, the loan, pursuant to which ACI has obtained $138 million in funding from Ameritech Corporation is something that the Ameritech Corporation board approved; is that right?

A. They approved it vis-a-vis the approval of the business plan.

Q. And when you say that it was approved vis-a-vis the approval of the business plan, is that because you believe the existence of the loan can be derived from the business plan that was submitted to the board?

A. I believe primarily because they're still cashing our checks when we submit them.

Q. Is it fair to say that the Ameritech Corporation board -- Well, I'll put it a different way.

Other than the fact that your checks are still

ATTACHMENT 2

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.	))))	Case No. 95-845-TP-COI

ENTRY ON REHEARING

The Commission finds:

(1) By Finding and Order (Order) dated June 12, 1996, the Commission adopted guidelines establishing local exchange competition in the state of Ohio.

On July 12, 1996, GTE North Incorporated (GTE); Cincinnati Bell Telephone Company (CBT); United Telephone Company of Ohio and Sprint Telecommunications Company, L.P. (collectively, Sprint); TCG Cleveland (TCG); The Edgemont Neighborhood Coalition and Appalachian People's Action Coalition (collectively, Edgemont/APAC); Cellnet of Ohio, Inc. (Cellnet); Ashtabula County Telephone Coalition (Coalition); AT&T Communications of Ohio, Inc. (AT&T); Ohio Centrex Association (Centrex Association); Ohio Cable Telecommunications Association (OCTA); city of Cleveland (Cleveland); Chillicothe Telephone Company (Chillicothe); the Office of the Consumers' Counsel (OCC); Ohio Telephone Association (OTA)[1]; the small local exchange telephone companies of Ohio (small companies); Ameritech Ohio (Ameritech); MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively, MCI); ALLTEL Ohio, Inc. and The Western Reserve Telephone Company (collectively, ALLTEL); Time Warner Communications of Ohio, Inc. (Time Warner); and Century Telephone of Ohio, Inc. (Century) filed applications for rehearing and clarification of the Commission's Order, pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code (O.A.C.).

(2) In an entry on rehearing issued August 1, 1996, the Commission granted rehearing for the purpose of evaluating the relationship between the rules developed by the Federal

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1 The OTA filed rehearing on behalf of all its members except for United Telephone Company of Ohio.

Time Warner notes that Ameritech's reliance on Section 272 of the 1996 Act is misplaced because that section is limited to manufacturing, origination of interLATA telecommunication services, and interLATA information services. MCI maintains that Section 253(b) of the 1996 Act authorizes the state commissions to enact reasonable restrictions on the entry of competing local providers in order to promote sound telecommunications policy and the public welfare. MCI also opines that the operation of a ILEC-affiliated NEC in the ILEC's service territory produces no additional competitive benefits but creates additional opportunities for cross-subsidization and anti-competitive behavior. TCG maintains that authorizing an ILEC-affiliate to operate as a NEC will not promote competition. In fact, this will merely serve to concentrate market share within the overall ILEC corporate structure.

This issue generated significant comment on rehearing. After weighing all of these competing positions, the Commission deems it appropriate to affirm this guideline as adopted and to deny rehearing on this matter. Consequently, we clarify that an ILEC may not have a NEC affiliate within its current serving area. The guideline was correct in stating that, by definition, an affiliate of an ILEC cannot automatically be labeled a NEC. Our concept of a NEC is a true stand alone new entrant with no or little local market share. One could hardly claim that an ILEC affiliate meets the definition given the market share and affiliation with the ILEC. Thus, the guideline is a correct statement of our intention and should stand.

While the Commission is satisfied that allowing ILECs to compete through a separate affiliate, pursuant to federal and state affiliation requirements, outside of their existing service territories will further competition, we have significant reservations about permitting ILECs to establish NEC affiliates to offer service within their existing service areas. Initially, we fail to envision how end users would benefit from a provision authorizing an ILEC to establish a NEC affiliate within its current service area.[7] To the contrary, an ILEC-affiliated NEC offering service on a resold basis will be very dependent upon the service offerings of its underlying facilities-based carrier. Should that facilities-based carrier be the affiliated

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[7] We recognize that, unlike other Ohio ILECs, Ameritech is required pursuant to the 1996 Act to offer certain services through separate affiliates. The Commission is currently considering and will decide Ameritech-specific issues in Case Nos. 96-327-TP-ACE and 96-658-TP-ACE.

ILEC, substantial opportunities exist for the ILEC and its affiliate to operate in an anti-competitive fashion notwithstanding the fact that any agreements between the two must be filed and approved by the Commission.

Moreover, as noted by TCG, authorizing an ILEC-affiliate to operate as a NEC presents opportunities for concentration of market share within the overall ILEC corporate structure. Such an approach would only serve to protect the ILEC and not further the promulgation of a competitive local exchange market in furtherance of the policy of Ohio as set forth in Section 4927.02, Revised Code, and as our guidelines are intended to do. We recognize that ILECs face certain obligations that NECs do not. However, once an ILEC can demonstrate that it has fully removed all barriers to competitive entry in its service area, nothing prohibits the ILEC from petitioning for regulatory flexibility similar to that flexibility afforded nonaffiliated NECs.

Furthermore, we find nothing in federal or state law which requires adoption of the rehearing applicants' positions. ALLTEL and Ameritech allege that, as written, this requirement acts as a barrier to entry contrary to Section 253(a) of the 1996 Act by prohibiting ILEC-affiliated NECs from providing service within the ILEC's service territory. It is clear from reviewing the entirety of Section 253 that Congress intended this provision to be a general prohibition against state and local requirements which constitute barriers to competitive entry. Section 253(a) does not, however, state that ILECs have an unconditional right to establish NEC affiliates so that an ILEC can compete against other nonaffiliated NECs on the same terms and conditions. Rather, the overriding principle of the 1996 Act and the regulations adopted by the FCC in furtherance of the policies of the 1996 Act are pro-competitive in nature. Adoption of the rehearing applicants' positions would run contrary to this purpose.

Moreover, immediately following the general barrier to entry provision in Section 253 of the 1996 Act is a provision which recognizes that states maintain and have an obligation to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. See Section 253(b) of the 1996 Act. The Conference Committee Report concerning Section 253(b) further explains that by

adoption of the general prohibition on barriers to entry, Congress recognized that "(E)xisting State laws or regulations that reasonably condition telecommunications activities of a monopoly utility and are designed to protect captive utility ratepayers from the potential harms caused by such activities are not preempted under this section." Adoption of a prohibition on ILEC-affiliated NECs from providing local exchange services in the same service area furthers this congressional mandate.

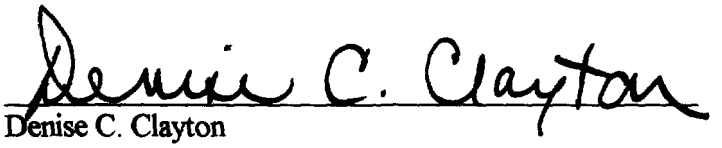
Having determined that, as a general matter, ILECs may not also operate NEC affiliates within their existing service territories, we acknowledge that unique circumstances may warrant consideration of certifying a Regional Bell Operating Company (RBOC) affiliate to operate within the RBOC's service territory. In such an application, the RBOC affiliate will have the burden of demonstrating that the application and authority requested comports with all state and federal laws and regulations. To the extent an ILEC affiliate proposes to market local exchange service or proposes to be the customer's interface on local exchange service, it should demonstrate why the whole or parts of the underlying ILEC's regulatory plan should not be applied to the affiliate in order to ensure quality service to end users while avoiding anti-competitive conduct and predatory pricing. In addition, the applicant must address why other Commission-ordered pricing and service quality rules or other conditions to address the concerns set forth in this entry on rehearing should not apply to it. We will review these and other specific issues based on the record established in Case No. 96-327-TP-ACE and Case No. 96-658-TP-ACE.

C. Certification Process

(12) OTA, in its fourth ground for rehearing, requests that the guidelines relating to NEC certificate proceedings be amended to require every NEC applying for initial or expanded authority to serve copies of such applications upon all LECs, both ILECs and NECs, operating in the proposed serving area. In support of this position, OTA avers that such notice is necessary in light of the short response time allotted for intervention and the abbreviated automatic approval process. Additionally, OTA maintains that such notice would enable interconnecting LECs to prepare for and accommodate entry of the new LEC.

CERTIFICATE OF SERVICE

I, Denise C. Clayton, hereby certify that a copy of the foregoing Comments of The Ohio Cable Telecommunciations Association was served upon the following parties of record this 6th day of February 1997, via electronic transmission, hand-delivery or ordinary U.S. mail, postage prepaid.



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